

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Joseph C. Holmes,) No. CV-08-190-PHX-DGC
10 Plaintiff,) **ORDER**
11 vs.)
12 Russell Barker, a Police Officer for the)
13 City of Clinton, Tennessee, et al.)
14 Defendants.)
15

16 Plaintiff is an inmate confined at the Cherokee County Jail in Canton, Georgia. In an
17 order dated June 19, 2008, the Court stated that this case would be dismissed in 10 days if
18 Plaintiff failed to show good cause before that date for his failure to serve the summons and
19 complaint. Dkt. #6. Plaintiff submitted a response to the order, which the Court received on
20 July 7, 2008. Dkt. #10. The Clerk dismissed the case the next day. Dkt. #9. Plaintiff has
21 filed a motion for reconsideration of the dismissal. Dkt. #10.

22 Because Plaintiff is an inmate, he is entitled to the “prison mail box rule,” which
23 deems a document to be “filed on the date on which the inmate signed and delivered the
24 document to prison authorities for mailing.” *Crockett v. Frigo*, No. CV 05-4060-PHX-JAT,
25 2007 WL 841523, at *2 n.3 (D. Ariz. Mar. 16, 2007) (citing *Houston v. Lack*, 487 U.S. 266,
26 270-71 (1988)). Plaintiff’s response to the Court’s order to show cause is dated June 27,
27 2008. Dkt. #10 at 2. The Court therefore concludes that the response was timely filed. *See*
28 Dkt. #6.

1 Plaintiff states in his response that he does not have the funds to hire a process server
2 and requests that service be effected by the United States Marshal. Dkt. #10 at 2. In his
3 motion for reconsideration, Plaintiff states that he has unsuccessfully attempted to serve
4 Defendants by mail and reurges his request to have the United States Marshal effect service.
5 Dkt. #11 at 1-2.¹

6 The Court finds that Plaintiff has shown good cause for his failure to serve process
7 on Defendants. The Court will grant the motion for reconsideration and allow Plaintiff an
8 additional 60 days to complete service upon Defendants. Because Plaintiff has been granted
9 in forma pauperis status (*see* Dkt. #4), the Court will grant his request to have service of
10 process effected by the United States Marshals Service. *See* Fed. R. Civ. P. 4(c)(2);
11 28 U.S.C. § 1915(c); *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir. 1991). Plaintiff is
12 instructed to promptly inform the Marshals Service of the names of the specific Defendants
13 Plaintiff wishes to have served, along with the addresses or locations of such Defendants.

14 Plaintiff is advised that he must become familiar with, and follow, the Federal Rules
15 of Civil Procedure and the Rules of the United States District Court for the District of
16 Arizona (“Local Rules”). Plaintiff is further advised that if he fails to prosecute this action
17 or comply with the rules or any Court order, the Court may dismiss the action with prejudice
18 pursuant to Federal Rule of Civil Procedure 41(b). *See Ferdik v. Bonzelet*, 963 F.2d 1258,
19 1260 (9th Cir.1992) (holding that the district court did not abuse its discretion in dismissing
20 a pro se plaintiff’s complaint for failing to comply with a court order).

21 **IT IS ORDERED:**

- 22 1. Plaintiff’s motion for reconsideration (Dkt. #11) is **granted**.
- 23 2. The Clerk is directed to **reopen** this case.
- 24 3. Plaintiff shall have **60 days** from the date of this order to accomplish service
25 upon Defendants.

26
27 ¹Plaintiff also requests leave to file an amended complaint. Because Defendants have
28 not appeared in this action, Plaintiff may file an amended complaint as a matter of course.
See Fed. R. Civ. P. 15(a)(1).

4. Plaintiff's request to have service of process effected by the United States Marshals Service is **granted**. Plaintiff shall promptly inform the Marshals Service of the names of the specific Defendants Plaintiff wishes to have served, along with the addresses or locations of such Defendants

5. The Clerk is directed to send Plaintiff copies of this order, the complaint (Dkt. #1), and the Court's Local Rules.

6. The Clerk shall **terminate** this case if Plaintiff fails to comply with this order.

DATED this 4th day of August, 2008.

David G. Campbell

David G. Campbell
United States District Judge

cc: USMS